

Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CLYDE RAY SPENCER, MATTHEW RAY  
SPENCER, and KATHRYN E. TETZ,

Plaintiffs,

v.

FORMER DEPUTY PROSECUTING  
ATTORNEY FOR CLARK COUNTY JAMES  
M. PETERS, DETECTIVE SHARON KRAUSE,  
SERGEANT MICHAEL DAVIDSON, CLARK  
COUNTY PROSECUTOR'S OFFICE, CLARK  
COUNTY SHERIFF'S OFFICE, THE COUNTY  
OF CLARK, SHIRLEY SPENCER and JOHN  
DOES ONE THROUGH TEN,

Defendants.

No. 11-5424 BHS

STIPULATION TO EXTEND TIME  
LIMIT FOR SERVICE OF  
DEFENDANTS CLARK COUNTY,  
SHARON KRAUSE, AND MICHAEL  
DAVIDSON

Note for: October 27, 2011

Pursuant to Fed. R. Civ. P. 4(m), the parties stipulate and request that the Court extend the time for Plaintiffs Clyde Ray Spencer, Matthew Ray Spencer, and Kathryn E. Tetz to serve Defendants Clark County, Sharon Krause and Michael Davidson to November 15, 2011.

Under Rule 4(m) the Court "must extend time for service upon a showing of good cause," and "may extend time for service upon a showing of excusable neglect." *Lemoge v. United States*, 587 F.3d 1188, 1198 (9th Cir. 2009). "Good cause to avoid dismissal may be demonstrated by establishing, at minimum, excusable neglect." In addition the following

1 factors support a finding of good cause: "(a) the party to be served personally received actual  
2 notice of the lawsuit; (b) the defendant would suffer no prejudice; and (c) plaintiff would be  
3 severely prejudiced if his complaint were dismissed." *Id.* at 1198 n. 3.

4 In serving Defendant Clark County, Plaintiffs inadvertently served Clark County via the  
5 Clark County Clerk instead of the Clark County Auditor. Plaintiffs will promptly serve Clark  
6 County via the Clark County Auditor upon issuance of a corrected summons.

7 Plaintiffs were delayed in serving Defendants Sharon Krause and Michael Davidson due  
8 to incorrect residence information, and multiple failed attempts at service. Defendant Krause  
9 was personally served at her residence in Fort Mohave, Arizona on October 6, 2011, six days  
10 after the 120-day time limit for service. Defendant Davidson was personally served at his  
11 residence in Bend, Oregon on October 22, 2011.

12 Defendants Clark County, Sharon Krause and Michael Davidson have actual notice of  
13 the lawsuit.

14 Defendants Clark County, Krause and Davidson have suffered no prejudice due to the  
15 delay in service.

16 The parties will be prejudiced by the alternative to an extension of time – dismissal of  
17 the complaint without prejudice – because dismissal will require the Plaintiffs to re-file the  
18 Complaint, needlessly delaying adjudication of the case.

19 For the foregoing reasons, the parties request that pursuant to Rule 4(m), this Court  
20 extend the time limit for service to November 15, 2011.

21 DATED this 27<sup>th</sup> day of October, 2011.

22 Respectfully submitted,

23 Attorneys for Plaintiffs

24 By s/ Daniel T. Davies

25 Daniel T. Davies, WSBA #41793  
26 1201 Third Avenue, Suite 2200  
27 Seattle, Washington 98101-3045  
Telephone: (206) 206.757.8286  
Fax: (206) 206.757.7286  
E-mail: dandavies@dwt.com

and

Kathleen T. Zellner  
Law Offices of Kathleen T. Zellner, P.C.  
Esplanade IV  
1901 Butterfield Road, Suite 650  
Downers Grove, Illinois 60515  
(630) 955-1212

Attorneys for Defendants

By s/ E. Bronson Potter – Telephone Authorization

E. Bronson Potter  
Chief Civil Deputy Prosecuting Attorney  
Clark County Prosecutor's Office, Civ. Div.  
P.O. Box 5000  
Vancouver, WA 98666-5000  
Telephone: (360) 397-2478  
Facsimile: (360) 397-2184  
Bronson.potter@clark.wa.gov

By s/ William H. Dunn – Email Authorization

William H. Dunn  
P.O. Box 1016  
Vancouver, WA 98666-1016  
Telephone: (360) 694-4815  
dunnwh@pacifier.com  
Via Telephone Authorization

By s/ Daniel J. Judge – Email Authorization

Patricia C. Fetterly, AAG  
Daniel J. Judge, Senior Counsel  
Washington State Attorney General's Office  
P.O. Box 40126  
Olympia, WA 98504-0126  
patriciafl@atg.wa.gov  
danielj@atg.wa.gov

CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2011, I electronically filed foregoing with the Clerk of the Court using the CM/ECF system which will send notification of said filing to the following:

**Daniel J. Judge, of Attorneys for Defendant James M. Peters**

danielj@atg.wa.gov, JoanK@atg.wa.gov, LaurelD@atg.wa.gov, TOROlyEF@atg.gov, TracyJ@atg.wa.gov

**Patricia Campbell Fetterly, of Attorneys for Defendant James M. Peters**

patriciafl@atg.wa.gov, cynthiam4@atg.wa.gov, deanm@atg.wa.gov, torolyef@atg.wa.gov

**E. Bronson Potter, of Attorneys for Defendants Detective Sharon Krause, Sergeant Michael Davidson, Clark County Prosecutor's Office, Clark County Sheriff's Office, The County of Clark**

Bronson.potter@clark.wa.gov

**William Hudson Dunn, Attorney for Defendant Shirley Spencer**

dunnwh@pacifier.com

The following will not receive electronic notification of the filing:

Robert M. McKenna  
Attorney General of Washington  
Government Operations Division  
7141 Cleanwater Drive SW  
PO Box 40108  
Olympia, WA 98504-0108

I certify that on October 27, 2011, I caused a true and correct copy of the foregoing to be mailed to Robert McKenna at the above address.

DATED this 27<sup>th</sup> day of October, 2011.

s/ Daniel T. Davies

Daniel T. Davies